

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF WEST VIRGINIA**

ANTHONY SILVESTER, III,

Plaintiff,

v.

Civil Action No. 1:12-CV-136 Judge Keeley

Electronically Filed 8/24/2012

JAMES I. DAVIS in his capacity as
Grafton City Police Department Sergeant;
KEITH HADDIX in his capacity as Taylor
County Sheriff's Deputy;
THE CITY OF GRAFTON, WEST VIRGINIA; and
THE TAYLOR COUNTY, W. VA.
SHERIFF'S DEPARTMENT,

Defendants.

COMPLAINT

Comes now the Plaintiff, Anthony Silvester, III, by David A. Kirkpatrick, Esq., to state the following as his complaint against the above named Defendants:

JURISDICTION AND VENUE

1. Jurisdiction is proper because this claim arises under the Constitution and laws of the United States pursuant to 28 U.S.C.A. § 1331.
2. Venue is proper in this Court under 28 U.S.C. § 1391 because the events giving rise to the present claims occurred in the Northern District of West Virginia.
3. Specifically, the events giving rise to this claim occurred in Taylor County, West Virginia.
4. At the time of the conduct alleged, Mr. Silvester was a resident of Randolph County, West Virginia.

5. Mr. Silvester is currently incarcerated and participating in the work-release incarceration program in Beckley, Raleigh County, West Virginia.
6. Upon information and belief, Defendant James I. Davis was at times relevant to this complaint a resident of Taylor County, West Virginia.
7. Upon information and belief, Defendant Keith Haddix at times relevant to this complaint was a resident of Taylor County, West Virginia.

CIVIL RIGHTS VIOLATIONS

8. Defendants James I. Davis and Keith Haddix, on August 27, 2010, and dates subsequent thereto as is herein alleged, in their capacity as Grafton City Police Department Sergeant and Taylor County Sheriff Deputy, respectively, and while under the color of State law, physically accosted the Plaintiff and otherwise used excessive force during their encounter with the Plaintiff.
9. Defendants James I. Davis and Keith Haddix's actions, on August 27, 2010, and dates subsequent thereto as is herein alleged, were in contravention to Plaintiff's constitutional rights secured by the Eighth Amendment of the United States Constitution to be free from cruel and unusual punishment.
10. Defendants James I. Davis and Keith Haddix's actions, on August 27, 2010, and dates subsequent thereto as is herein alleged, were in contravention to Plaintiff's liberty interest secured by the Fourteenth Amendment of the United States Constitution.
11. While exercising acts of excessive force, Defendant James I. Davis employed training and equipment given to him by the town of Grafton, West Virginia.
12. While exercising acts of excessive force, Defendant Keith Haddix employed training and equipment given to him by the Taylor County Sheriff's Department.

13. In addition to the doctrine of *respondeat superior*, the City of Grafton is liable for the damages inflicted upon Plaintiff based upon the negligent methods and means that Defendant, James I. Davis was trained to use.

14. In addition to the doctrine of *respondeat superior*, the Taylor County Sheriff's Department is liable for the damages inflicted upon Plaintiff based upon the negligent methods and means that Defendant Keith Haddix was trained to use.

ASSAULT AND BATTERY

15. On August 27, 2012, Defendants James I. Davis and Keith Haddix jointly and severally committed unlawful assault and battery upon the Plaintiff, without provocation and / or Plaintiff's license or consent, with malicious intent to harm and maim the Plaintiff.

16. Said acts of Defendants inflicted serious bodily injury upon the Plaintiff's person and proximately caused Plaintiff severe physical, emotional, and psychological injuries.

17. As a direct result of the joint and several actions of all of the above named Defendants, the Plaintiff incurred and will incur in the future damages in an amount sufficient to satisfy the jurisdictional requirement of this Court, and in the forms of but not limited to, past medical expenses, future medical expenses, permanent impairment, pain and suffering, annoyance and inconvenience, and emotional distress.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

18. On August 27, 2010, Defendants James I. Davis and Keith Haddix violated their position of trust as uniformed law enforcement officials by not only engaging in excessive force in the manner and means upon which they dealt with the Plaintiff, but also giving false information as to how Plaintiff sustained his injuries to hospital staff and others.

19. As a result of Defendants' actions, the Plaintiff now has an unusual fear of law enforcement personnel and anxiety about being out in public in general and more specifically in Taylor County, WV.
20. Said Defendants' actions were intentional and reckless.
21. Said Defendants' actions were outrageous and intolerable so that they would offend the generally accepted standards of decency and morality.
22. Said Defendants' conduct was the proximate cause of the Plaintiff's distress.

PRAYER FOR RELIEF

Wherefore, the Plaintiff prays for damages in an amount sufficient to fully compensate him for past medical expenses, future medical expenses, permanent impairment, pain and suffering, annoyance and inconvenience, emotional distress, embarrassment and humiliation, loss of enjoyment of life, consequential legal expenses, punitive damages if warranted, and any other damages to which he is legally entitled.

PLAINTIFF DEMANDS A TRIAL BY JURY.

ANTHONY SILVESTER, III,

By Counsel:



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